

1 Roderick M. Thompson (State Bar No. 96192)
2 rthompson@fbm.com
3 Robert C. Holtzapple (State Bar No. 145954)
4 bholtzapple@fbm.com
5 Helen Dutton (State Bar No. 235558)
6 hdutton@fbm.com
7 Diego F. Acevedo (State Bar No. 244693)
8 dacevedo@fbm.com
9 Farella Braun & Martel LLP
10 235 Montgomery Street, 17th Floor
11 San Francisco, CA 94104
12 Telephone: (415) 954-4400
13 Facsimile: (415) 954-4480

14 Attorneys for Plaintiff
15 VISA U.S.A. INC.

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 VISA U.S.A. INC.,

19 Plaintiff,

20 vs.

21 MARITZ INC., d/b/a MARITZ
22 LOYALTY MARKETING,

23 Defendant.

Case No. CV-07-5585 JSW

**DECLARATION OF RODERICK M.
THOMPSON IN SUPPORT OF MOTION
TO STAY ACTION AND TO COMPEL
ARBITRATION**

Date: February 8, 2008
Time: 9:00 a.m.
Courtroom: 2 (17th Floor)
Hon. Jeffrey S. White

24 I, Roderick M. Thompson, declare as follows:

25 1. I am an attorney licensed to practice law in the State of California, and a partner
26 with the law firm of Farella Braun + Martel LLP, counsel for Plaintiff Visa U.S.A. Inc. ("Visa")
27 in this action. I have first hand knowledge of the following facts; if called as a witness, I would
28 testify to the same.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts of the Master
Services Agreement between Visa U.S.A. Inc. ("Visa") and Maritz Inc. ("Maritz"), dated April
17, 2006.

1 3. By letter dated April 20, 2007, Visa terminated the contract it had with Defendant
2 Maritz Inc. ("Maritz"), explicitly reserving all of its rights. A true and correct copy of this letter
3 is attached hereto as Exhibit B.

4 4. In a letter dated May 7, 2007, Maritz responded, claiming that it was owed more
5 than \$5 million by Visa, and stating that Maritz was reserving its rights as Visa had. A true and
6 correct copy of this letter is attached hereto as Exhibit C.

7 5. In a letter dated June 5, 2007, Visa responded stating that it anticipated providing
8 additional information to Maritz as to the nature and amount of Visa's claims at the appropriate
9 time, and suggesting that the parties discuss "a process for resolving our" claims. A true and
10 correct copy of this letter is attached as Exhibit D.

11 6. Attached hereto as Exhibit E is a true and correct copy of a July 2, 2007 letter from
12 Elizabeth L. Buse, Executive Vice President of Product Development and Management for Visa,
13 to Kevin Taylor, President of Maritz Loyalty Marketing.

14 7. In early July, I received a call from Steve Gallant, VP and Associate General
15 Counsel of Maritz. We discussed our clients' shared goal of an efficient resolution of their
16 respective claims and agreed to a three step (negotiation, mediation and arbitration) dispute
17 resolution process set forth in the attached Letter Agreement. A true and correct copy of this
18 letter is attached as Exhibit F. Mr. Gallant suggested the 30-60-90 day time increments for the
19 three stages as an efficient way to structure a tiered ADR procedure.

20 8. On July 10, Mr. Gallant signed the Letter Agreement, transmitting it to me via the
21 following email:

22 Rod - attached is an executed agreement outlining the procedures **for resolving any**
23 **differences that may exist between Visa and Maritz.** It is my understanding that the
24 first direct negotiation meeting will take place on or about July 24, 2007 and there will
25 then be 30 days to reach a resolution. **In the event we are unable to reach agreement,**
26 **we will then escalate to mediation and arbitration as set forth in the letter.** Please call
27 me should you have any questions.
28

1 See Gallant Email dated July 10, 2007 (emphasis added). A true and correct copy of this email is
2 attached as Exhibit G.

3 9. Mr. Gallant called me on or about July 23. He asked whether Visa was making a
4 claim for payment for Maritz breaches of the underlying contract and, if so, how much it was. I
5 told him that Visa's claim was considerable, in the range of tens of millions of dollars. I read the
6 language of the agreement to Mr. Gallant stating that it would resolve both parties' "**respective**
7 **claims for damages.**" See Exhibit F, Letter Agreement (emphasis added). Mr. Gallant said he
8 was surprised and upset by the magnitude of Visa's claim, but that nothing I had said in our
9 conversations had been inaccurate and he was not accusing me of trying to deceive him. He said
10 that Maritz would engage outside counsel, and that Maritz might or might not agree to proceed
11 with arbitration.

12 10. Attached hereto as Exhibit H is a true and correct copy of a July 23, 2007 email
13 from Steve Gallant to Roderick M. Thompson.

14 11. Attached hereto as Exhibit I is a true and correct copy of an August 8, 2007 email
15 from Steve Gallant to Roderick M. Thompson.

16 12. Attached hereto as Exhibit J is a true and correct copy of an email string dated
17 August 22, 2007 from Steve Gallant to Roderick M. Thompson

18 13. On November 2, 2007, Visa filed a demand for arbitration with the American
19 Arbitration Association ("AAA") in San Francisco, which I served on Charles Weiss, counsel for
20 Maritz, the same day. A true and correct copy of this letter is attached hereto as Exhibit K.

21 14. Attached hereto as Exhibit L is a true and correct copy of a November 16, 2007
22 letter from Mr. Weiss to the AAA.

23 15. Attached hereto as Exhibit M is a true and correct copy of the November 26, 2007
24 letter from Maritz to the AAA.

25 16. The AAA rejected Maritz's jurisdictional challenge in a letter dated November 30,
26 2007. In that same letter, the AAA directed the arbitration to proceed and provided both parties
27 with a list of potential arbitrators. A true and correct copy of the AAA letter is attached hereto as
28 Exhibit N.

